

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JIMMY G. MEJIA,

No. C 14-3304 WHA (PR)

Petitioner,

ORDER TO SHOW CAUSE

v.

M.E. SPEARMAN,

(Docket No. 2)

Respondent.

INTRODUCTION

Petitioner, a California prisoner proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. 2254. The petition challenges the denial of parole by the California Board of Parole Hearings (“Board”) in 2013. He has applied for leave to proceed in forma pauperis.

ANALYSIS

A. STANDARD OF REVIEW

This court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ

of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state court must “specify all the grounds for relief which are available to the petitioner ... and shall set forth in summary form the facts supporting each of the grounds thus specified.” Rule 2(c) of the Rules Governing Section 2254 Cases, 28 U.S.C. foll. 2254. “[N]otice’ pleading is not sufficient, for the petition is expected to state facts that point to a ‘real possibility of constitutional error.’” Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir. 1970)).

B. LEGAL CLAIMS

Petitioner alleges that he had a parole hearing in 2013 at which the Board found him unsuitable for parole. He claims that the Board’s decision violates his rights to due process and equal protection because the decision was “predetermined,” i.e. the Board made its decision before the hearing. For purposes of federal habeas review, the federal constitutional right to due process entitles a California only to “minimal” procedural protections in connection with a parole suitability determination. *Swarthout v Cooke*, 131 S.Ct. 859, 863 (2011). The procedural protections are limited to an opportunity to be heard and a statement of the reasons why parole was denied. *Id.* at 862. Because Petitioner’s claim, when liberally construed, could amount to an assertion that by making its decision before the hearing, the Board denied him an opportunity to be heard, it cannot be said at this stage that this claim is without merit, and Respondent will be ordered to answer the claim.

CONCLUSION

1. The clerk shall mail a copy of this order and the petition with all attachments to the respondent and the respondent’s attorney, the Attorney General of the State of California. The clerk shall also serve a copy of this order on the petitioner.

2. Respondent shall file with the court and serve on petitioner, within ninety-one days of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted based on the claim found cognizable herein. Respondent shall file with the answer and serve on petitioner a copy of all portions of the state trial record that have been transcribed

1 previously and that are relevant to a determination of the issues presented by the petition.

2 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the
3 court and serving it on respondent within twenty-eight days of the date the answer is filed.


4 3. Respondent may file, within ninety-one days, a motion to dismiss on procedural
5 grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the
6 Rules Governing Section 2254 Cases. If respondent files such a motion, petitioner shall file
7 with the court and serve on respondent an opposition or statement of non-opposition within
8 twenty-eight days of the date the motion is filed, and respondent shall file with the court and
9 serve on petitioner a reply within fourteen days of the date any opposition is filed.

10 4. Petitioner is reminded that all communications with the court must be served on
11 respondent by mailing a true copy of the document to respondent's counsel. Petitioner must
12 keep the court informed of any change of address and must comply with the court's orders in a
13 timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute
14 pursuant to Federal Rule of Civil Procedure 41(b). *See Martinez v. Johnson*, 104 F.3d 769, 772
15 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

16 5. The application to proceed in forma pauperis (docket number 2) is **GRANTED**.

17 **IT IS SO ORDERED.**

18 Dated: August 11, 2014.

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20 WILLIAM ALSUP
21 UNITED STATES DISTRICT JUDGE
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